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### A Brief Survey of Court Decisions Construing the North Dakota Bill of Rights

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## A BRIEF SURVEY OF COURT DECISIONS CONSTRUING THE NORTH DAKOTA BILL OF RIGHTS

### THE CONSTITUTION OF NORTH DAKOTA

#### PREAMBLE

We the People of North Dakota, grateful to Almighty God  
for the blessings of civil and religious liberty, do  
ordain and establish this constitution.<sup>1</sup>

#### ARTICLE I

##### BILL OF RIGHTS

By Prof. Ross C. Tisdale

"Article I of the state Constitution consists of twenty-four  
section and is known as the 'Declaration of Rights.' These sec-  
tions deal with the right of the individual; to enjoy and defend

<sup>1</sup> Preamble, see Debates Constitutional Convention of N. D. (1889)  
pp. 357. 360.

life and liberty; to alter and reform the government 'whenever the public good may require;' to remain an inseparable part of the American union; to enjoy the free exercise of religious profession and worship; to be entitled to the privilege of the writ of habeas corpus which is not to be suspended 'unless when in case of rebellion or invasion, the public safety may require;' to give bail when charged with criminal offense; to trial by jury, and to be free from star chamber processes; to free speech and free assembly and equality in standing before the law; to the subordination of the military to the civil power and to the assistance of the state in his defense; to be certain he shall not twice be 'put in jeopardy for the same offense, nor be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law;' to possess and enjoy his own private property which shall not be taken from him or 'damaged for public use without just compensation having been first made to, or paid into court' for him; to be free from imprisonment for debts; to be secure in his person and home and in his papers and effects against any unreasonable searches and seizures; to be free to obtain employment; to be certain that 'no bill of attainder, ex post facto law, or law impairing the obligations of contracts shall even be passed;' to be certain that 'all laws of a general nature shall have a uniform operation' and to know that 'no special privileges or immunities shall ever be granted which may not be altered, revoked or repealed by the legislative assembly; nor shall any citizen or class of citizens be granted privileges or immunities which upon the same terms shall not be granted to all citizens.'

To make more certain that the inalienable rights are secured to everyone, under all circumstance and under all crises, the people of this State said in s 21;

"The provisions of this constitution are mandatory and prohibitory unless, by express words, they are declared to be otherwise;" and in s 24:

"To guard against transgression of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate."

Thus has our Supreme Court summarized the content and purpose of the Bill of Rights. It is the purpose of this paper to take each individual section and briefly show how it has been applied by our courts in the protection "of civil and religious liberty."

## SECTION I

All men are by nature equally free and independent and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and pro-

<sup>2</sup> Burr, J., in *State ex rel. Cleveringa v. Klein*, 63 N. D. 514, 525, 249 N. W. 118, 123, 86 A. L. R. 1523 (1933)

protecting property and reputation; and pursuing and obtaining safety and happiness.

This section is clearly a broad declaration of fundamental rights covered more specifically by later sections. The cases cite Section 1, mainly, in relation to the power of the state to regulate business in the interests of the health, morals, and general welfare of the entire state. For example, an early case involved the right of the legislature to enact general laws under which corporations could agree in the business of banking upon complying with certain restriction, and prohibiting private individuals from so doing. In upholding the statute the court stated that "as a matter of precedent and authority, the legislative prerogative, in the exercise of its police power in promoting the public safety, not only to regulate and restrict the business of banking, but also to grant the right to one class, and to prohibit it to others, or even to forbid it altogether has never been questioned in the courts . . . ." Wallin, J., in *State, ex rel. Goodsill v. Woodmansee*, 1 N. D. 246, 250, 46 N. W. 970, 971, 11 L. R. A. 420 (1890).

Nor is the police power necessarily limited to protection of health, safety and morals. "The prevention of fraud and deceit, cheating and imposition, is equally within the power, and a state may prescribe all such regulations as in its judgement will secure or tend to secure the people against the consequences of fraud." Hence a statute requiring the licensing of cream station operators is constitutional where its purpose was to "prevent unfair competition by which the financially stronger foreign creameries . . . may destroy those of this state by overgrading or overmeasuring . . . ."

It is not historically true, as contended by counsel for appellant, that a person has a natural right to engage in any useful and lawful business, free from legislative interference and control . . . . A business may be useful, yet the method of conducting it may unless regulated, be conducive of harm, and in the same way there may be inducements to and avenues of fraud in a perfectly legitimate business, or cases in which danger of fraud should be minimized even though the business may be useful and harmless, and even a useful business may be so affected with a public interest that it may be properly regulated." Bruce, Ch. J., in *Cofman v. Osterhous*, 40 N. D. 390, 400, 168 N. W. 826, 828, 18 A. L. R. 219 (1918). So too, the right to regulate the business of plumbing in the interests of public health, may be vested by the legislature in the various city governments. *State ex rel. City of Bismarck v. District Court in and for Burleigh County*, 64 N. D. 399, 253 N. W. 744 (1934). Public utilities are clearly subject to regulation because of the public interest. *State ex rel. Hughes v. Milhollan*, 50 N. D. 184, 195 N. W. 292 (1923). However, in regulating a business the legislature must

<sup>16</sup> R. C. L. 208; *Cofman v. Osterhous*, 40 N. D. 390, 400, 168 N. W. 826, 828 (1918).

not act arbitrarily or unreasonably. An absolute requirement that stock trains maintain an average speed of twenty miles an hour when transporting stock is not reasonable since it does not make allowance for wrecks, weather, or other unforeseeable causes of delay. *Downey v. Northern Pac. R. Co.*, 19 N. D. 621, 125 N. W. 475, 26 L. R. A. (N. S.) 1017 (1910). The right of the state to regulate the liquor traffic in the interests of the public health and morals is thus stated by Christanson, J.: "The basic principle which underlies all legislation relative to the liquor traffic is that the traffic is one which the state may regulate or prohibit in the interests of public morality and welfare." *State ex rel. Germain v. Ross*, 39 N. D. 630, 637, 170 N. W. 121, 124 (1918). And a statute defining intoxicating liquor as any beverage retaining the "alcoholic principle" did not make a state law prohibiting the manufacture and sale of such beverage unconstitutional under Section 1, because the sale of such liquors, even though not intoxicating in the popular sense, would render the problem of enforcement more difficult. *State v. Fargo Bottling Works Co.*, 19 N. D. 396, 124 N. W. 387, 26 L. R. A. (N. S.) 872 (1910).

(Continued Next Issue)

## OUR SUPREME COURT HOLDS

### IN THE MATTER OF THE ESTATE OF FRANK NOVAK DECEASED

In Ludmila Novak, Pet. and Applt. vs. Robert Novak, Emilie Lane, Henry Novak, and Franklin D. Tonne, as Executor of the Last Will, Testament and Estate of the above named Frank Novak, Respt. Robert Novak, Emilie Lane, Henry Novak, Appls.

That upon an appeal by an executor of an estate from an order of the county court determining the amount of the commission to be paid to him by said estate, the failure to file and serve an undertaking on appeal does not prevent the jurisdiction of the district court from attaching.

That where an executor appeals from an order of the county court fixing the amount of commission to be paid him by the estate of which he is the executor, and the notice of appeal conforms to the requirements of the statute, the district court has jurisdiction to remand the record to the county court in order to permit the executor to apply to that court for an order settling the amount of undertaking on appeal. In this case it is not determined whether such undertaking on appeal was necessary when the executor had furnished a bond as executor of the estate.

That where the sole issue on said appeal is the amount of the commission to which the executor is entitled, it is held: The district court did not err in determining the amount of commission to be paid by the estate, so the amount allowed was within the limits set by Section 8822 of the Comp. Laws.

Appeal from a judgment of the District Court, Richland County, Hon. W. H. Hutchinson, Judge. **AFFIRMED.** Opinion of the Court by Burr.J.

In State of North Dakota, ex rel, Mary Kusie, Pltf., and Respt., vs. L. E. Weber, Deft. and Applt.

That under the provisions of Sec. 396 all of Supp., which authorizes the workmen's compensation bureau to make an award against a delinquent employer, engaged in a hazardous business, in favor of an employee injured in the course of his employment, the injured person has the burden of proving he was an employee at the time he received the injury and that the injury was received in the course of the employment.